IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3806 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANAGERSHRI

Versus

RAMVISASING MAHARAJSING

Appearance:

1. Special Civil Application No. 3806 of 1994

MR RV DESAI for Petitioner No. 1-2

NOTICE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/01/2004

ORAL JUDGEMENT

Heard learned advocate Mr.R.V.Desai on behalf of the petitioner. Though, notice of Rule has been served on the respondent, the respondent has not remained

present and no appearance is filed on their behalf and therefore, the matter is taken up for hearing in absence of the respondents as the matter is of the year 1994.

The petitioner has challenged the award passed by the labour court, Ahmedabad in Reference No.246 / 1990 dated 19th October, 1993 whereby the labour court has set aside the termination order and granted reinstatement with continuity of service with full backwages of the interim period.

Learned advocate Mr.R.V.Desai has submitted that after termination, offer has been made by the employer to work but the workman has not reported for work and therefore, by interim order, this Court has stayed the backwages. He also submitted that the labour court has committed gross error in setting aside the termination order because both the workmen have accepted the due amount which was sent by the employer. Therefore, the labour court has committed gross error in granting the relief in favour of the respondents.

I have perused the entire award passed by the labour court, Ahmedabad. Both the workmen were working as Watchman with the petitioner with effect from September, 1982 and thereafter, their services came to be terminated with effect from 27th October, 1989 and in place of the respondents, another Security Guards were appointed by the petitioner. This fact has been opposed by the petitioner by filing reply before the labour court vide Exh.6 and denied averments made by the workmen. Thereafter, the labour court has examined the issue as mentioned in para-4. The workmen Rajaramsinh and Ramvilas Maharajsinh were examined vide Exh.10 and 12 respectively. According to their evidence, both the workmen were working continuously and twelve hours work were taken with effect from September, 1982 till the date of termination dated 27th October, 1989. It is case of the respondents that their services came to be terminated without issuing show cause notice or without any opportunity of being hearing and no departmental inquiry was conducted before termination of service. On behalf of the petitioner, one General Manager Mr.Mukeshbhai Vasantrao was examined vide Exh.14. According to his evidence, there were three Watchman and the name of the third watchman was Jeshigbhai Raghuvir. According to his evidence, the company has not terminated service of both these workmen but the workmen voluntarily left the job and the company has informed and called the workmen to report for duty but they had not resumed the duty as they were not interested in the job. But in cross

examination, said witness General Manager admitted that on 26th October, 1989 service of both the workmen came to be terminated by the petitioner company. It was also admitted by him that no departmental inquiry was conducted and no legal procedure was followed before terminating service of the workmen. However, he submitted that whatever due amount of workmen were sent to them and same were received by them. This aspect has been examined by the labour court and as such, no evidence led by the petitioner about gainful employment of the workmen and the workmen had deposed before the labour court that they remained without work during the interim period. Considering the legal evidence which were on record, ultimately, the labour court has come to the conclusion that the service of the workmen came to be terminated illegally contrary to the principle of natural justice and without proper procedure and therefore, the same has been set aside. Once gainful employment is not proved by the petitioner, the labour court has granted the full backwages of the interim period.

I have perused the award passed by the labour court. I have considered submissions made by the learned advocate Mr.R.V.Desai. Learned advocate Mr.R.V.Desai has raised contention that on two occasions, offer was made to the workmen i.e. one is dated 27th November, 1989 during the conciliation proceedings and thereafter on 4th December, 1989 that is also during the conciliation proceedings but inspite of said offers, none of the workman remained present and resumed the duty. Even thereafter also, third offer was made to the workmen by letter dated 17thJanuary, 1990 and even though, the workmen had not reported for work and not resumed the duty and therefore, the workmen are not entitled to any amount of backwages.

I have considered submissions made by the learned advocate Mr.Desai. Looking to the award passed by the labour court, according to the evidence of the witness of the petitioner company viz. General Manager Shri Mukeshbhai Vasantrao, there is no whisper made in the evidence that earlier offer was made to the workmen to resume the duties and no such letter has been produced on record and no reference is made by the labour court in his award. Therefore, this argument cannot be accepted and even the letter cannot be considered by this Court while exercising the powers under Article 227 of the Constitution of India. Therefore, it is burden upon the employer to prove the gainful employment but that has not been proved and therefore, the labour court has rightly granted backwages. Afterall, this Court having very

limited jurisdiction under Article 227 of the Constitution of India and this Court cannot act as an appellate authority when the labour court has not committed any error while passing such award. This Court cannot interfere with the award while exercising the powers under Article 227 of the Constitution. The powers of judicial review of this Court is very limited. Recently, the view taken by the Apex Court in respect of the judicial powers of this Court in case of SYED T.A. NAQSHBANDI AND OTHERS V. STATE OF JAMMU & KASHMIR AND OTHERS reported in [2003] 9 SCC 592. The following observations made in Head Note [H], since relevant to be observed, referred as under :

> "Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the material by the Courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions. Grievances must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Unless the exercise of power is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before Courts."

Considering the observations made by the Apex Court and also considering the award passed by the labour court, according to my opinion, the labour court has not committed any error which requires any interference by this Court while exercising the powers under Article 227 of the Constitution of India and hence, there is no substance in the present petition and the same is rejected accordingly.

Rule is discharged. Interim relief, if any, stands vacated. No order as to costs.

Date : 19.1.2004 [H.K.Rathod, J.]

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